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Progress report by the independent expert on the situation of human rights in the Democratic Republic of the Congo

Note by the Secretariat*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the independent expert on the situation of human rights in the Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré, submitted pursuant to General Assembly resolution 60/170.

* This report is being transmitted late in order to include important information concerning the elections that took place in the country on 30 July 2006, and to report on their consequences up to 30 August 2006.

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Summary

At its sixtieth session the General Assembly, by its resolution 60/170, decided to continue to examine the situation of human rights in the Democratic Republic of the Congo and requested the independent expert on the situation of human rights in the Democratic Republic of the Congo to report to the General Assembly at its sixty-first session. Like the special procedures and thematic mandates of the Commission on Human Rights, the mandate of the independent expert on the situation of human rights in the Democratic Republic of the Congo was extended for one year by decision 1/102 of the Human Rights Council.

In 2005, the independent expert visited the Democratic Republic of the Congo from 16 to 27 August. He had intended to pay a further visit to the country in late 2005, but the schedules of the relevant authorities — who were all immersed in the process leading up to the constitutional referendum held on 18 and 19 December 2005 and its consequences — eventually prevented him from travelling. Nevertheless, the information received by the independent expert during 2006 does enable him to make relevant comments on the situation of human rights in the Democratic Republic of the Congo.

The human rights situation remains worrying, particularly in the eastern part of the country and in northern Katanga, where national and foreign militias, as well as the Mai-Mai and the armed forces of the Democratic Republic of the Congo, are committing atrocities and other massive human rights violations with impunity. Massacres of civilians, looting, mass rapes of women and girls and summary executions, among other things, are posing a serious challenge to the Transitional Government's efforts to improve the situation.

The political situation at the end of 2005 and in the first half of 2006 was mainly dominated by the preparations for and holding of the presidential and legislative elections, and the accompanying electoral fever. However, violations occurred — in some cases extremely serious ones — in virtually all spheres of human rights.

The precarious situation of unpaid or underpaid State employees and civil servants, the climate of impunity and the threats, harassment and assassinations suffered by journalists and human rights defenders are causing unrest and jeopardizing the return to peace.

The weakness of the judiciary and its lack of independence vis-à-vis the executive branch, which also controls judicial decisions, are also regrettable. Added to this is the problem of lack of security, the situation of women and children, the trafficking and illegal exploitation of natural resources and other violations of fundamental rights.

In such a context, the independent expert recommends:

– That there should be greater dialogue between political and social actors;

– That the process of disarming militia such as the Forces démocratiques de libération du Rwanda, the Interahamwe, the "Rastas" and the Mai-Mai should be accelerated;

– That the forces of law and order should be ordered to stop suppressing rallies and other public demonstrations, and the close protection officers of the

ex-belligerents should be ordered not to take the place of the forces of law and order;

That public freedoms should be respected in all circumstances, and mechanisms set up to combat impunity;

That all necessary measures should be adopted to ensure respect for the human person, in particular women and children, and that all trafficking and exploitation of all kinds should be stopped, especially sexual violence used as a weapon of war;

That the Government should strive to promote the independence of judges and magistrates and to provide the judicial system with a budget that will guarantee its independence.

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I. Introduction

1. By its resolution 2004/84 of 21 April 2004, the Commission on Human Rights decided to appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights in the Democratic Republic of the Congo, to study the evolving situation of human rights and to verify that obligations in that field were being fulfilled.

2. On 21 April 2005, the independent expert presented his preliminary report to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/120). He then presented a report to the General Assembly at its sixtieth session in October 2005 (A/60/395) and prepared a report for the Commission on Human Rights at its sixty-second session (E/CN.4/2006/113), which was to be examined by the Human Rights Council.

3. At its sixtieth session, the General Assembly, by its resolution 60/170, decided to continue to examine the situation of human rights in the Democratic Republic of the Congo and requested the independent expert on the situation of human rights in the Democratic Republic of the Congo to report to it at its sixty-first session.

4. This report is based on information transmitted regularly to the independent expert by the field office of the Office of the High Commissioner for Human Rights (OHCHR) in the Democratic Republic of the Congo, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and representatives of institutions, non-governmental organizations (NGOs), political parties and associations. The report reflects information received up to 30 August 2006.

5. The varied information received revealed that, while attention must be focused on the electoral process under way, lack of security, impunity and serious human rights violations remain cause for concern.

6. The independent expert has decided to focus in this report on the following issues:

(a) The electoral process;

(b) Lack of security;

(c) Massive violations of human rights, including sexual violence;

(d) Impunity and justice.

7. The independent expert also carried out other activities related to his mandate: he expressed opinions to the Government and replied to human rights communications dealing with such issues as lack of security, the disarming and reintegration of militias, justice and the fight against impunity.

8. On 11 January 2006, as part of the component of his mandate relating to technical and legal assistance, the independent expert sent a memorandum to the Government of the Democratic Republic of the Congo setting out his analyses and recommendations concerning the situation of human rights in the country. The memorandum focused on 21 points, including the massacres and human rights violations perpetrated in May 2005 in South Kivu, the suppression of the demonstrations of 30 June 2005, cases of murder and assassination, illegal exploitation of resources of the Democratic Republic of the Congo, the situation of

children, lack of security, elections, population displacement, the management of public demonstrations, the administration of justice, children associated with the armed forces and armed groups, intercommunal strife, and international justice.

9. In the area of human rights violations, sexual violence is a scourge of unimaginable horror. For example, during the first half of 2006, a four-month-old baby girl and a woman over the age of 70 were raped. Moreover, most of the cases reported were gang rapes. On 10 April 2006, as part of the component of his mandate relating to technical assistance, the independent expert sent a memorandum to the Government setting out analyses that confirmed the existence, extent and seriousness of the crimes and putting forward recommendations aimed at curbing these grave human rights violations.

10. On 24 April 2006, also as part of the component of his mandate relating to technical assistance, the independent expert sent a memorandum to the Government containing an analysis of the endemic lack of security throughout the country and recommendations on how to assert the sovereignty of the State and establish peace.

11. Following the announcement of the results of the first round of the presidential elections held on 30 July 2006, the independent expert was informed of a sudden and serious deterioration in the social climate between 20 and 22 August, with clashes, involving heavy weaponry, between the close protection officers of the two winners of the first round of the presidential elections — President Joseph Kabila and his Vice-President, Jean-Pierre Bemba — both of whom will again be contenders in the second round, scheduled for 29 October 2006. In this regard, on 25 August 2006, the independent expert sent them both a letter setting out his analysis of the situation and his recommendations.

II. Status of the transition

A. Institutional, political, social and cultural developments

12. During the period under consideration, the main institutional development was the progress made by the Government and Parliament in implementing the road map of the Global and All-Inclusive Agreement on the Transition. Thus, on 18 February 2006, President Joseph Kabila promulgated the new Constitution and unveiled the new flag of the Democratic Republic of the Congo, two key elements in the expression of national and international sovereignty.

13. On 3 April 2006, the President of the National Assembly, Olivier Kamitatu, submitted his resignation to the Head of State, following the ruling issued by the Supreme Court of Justice in December at the request of President Kabila. According to that ruling, deputies who had left their original political parties would have to give up their seats. Consequently, on 5 April 2006, the candidacy of Thomas Luhaka, National Secretary of the Mouvement pour la libération du Congo (MLC), was submitted to the Bureau of the National Assembly as its new President.

14. In a communiqué issued on 17 July 2006, the International Committee for Support to the Transition (ICST) stressed the need for the Armed Forces of the Democratic Republic of the Congo (FARDC) and the Republican Guard, formerly the Special Presidential Security Group (GSSP), to be confined to barracks before,

during and immediately after the voting and stressed the need to promote a climate of peace and quiet during the elections.

B. Disarmament and reintegration

15. Disarmament and reintegration remain a priority of government action in the Democratic Republic of the Congo, the national security forces, with the support of MONUC and several partners, have achieved welcome results, despite some slippage.

16. More than 15,000 militiamen have been disarmed as part of the demobilization programme and the number of recalcitrant combatants in the various militias in Ituri district today is estimated at 2,000 or 3,000.

17. According to various sources, 2,997 FARDC members — including 22 women and 13 children — were disarmed between March and April 2006.

18. Various sources also estimate that 1,350 ex-combatants were demobilized and reintegrated in Uvira and Fizi, in South Kivu, after a demobilization operation was launched in Kiringye.

19. On 20 July 2006, the MONUC military spokesperson indicated that in Ituri almost 4,000 Congolese militiamen had surrendered their weapons since the end of June, bringing the number of weapons surrendered by all Ituri groups combined to 2,141.

20. Between 14 and 19 August, 85 militiamen operating in Ituri laid down their weapons as part of the national programme for disarmament, demobilization and reintegration (DDR).

III. The electoral process

A. Origins and organization

21. The final step in building peace and establishing the rule of law in the Democratic Republic of the Congo was to hold the presidential and legislative elections that had been envisaged in the Global and All-Inclusive Agreement signed in Pretoria in 2002 and strongly recommended by the international community.

22. These elections, the first phase of which took place on 30 July 2006, are a milestone in the history of the Democratic Republic of the Congo. In total, 17,931,238 of the country's 25,420,199 registered voters participated in these elections, which were the country's first truly free, democratic and transparent elections in 40 years.

23. In addition to the 33 candidates in the presidential elections, there were 9,707 candidates in the legislative elections for the 500 seats in the future National Assembly. For these elections, 49,746 polling stations were set up throughout the country, of which 8,518 were in Kinshasa. Moreover, 35,000 national observers, 1,700 international observers — mandated by such international organizations as the Southern African Development Community (SADC), the International Organization of la Francophonie (OIF), the Electoral Institute of Southern Africa (EISA) and the

European Union (EU) and by such countries as the United States and Japan — and 78 African Union observers were deployed throughout the country. Such a level of electoral assistance was unprecedented in the subregion.

24. In this context, certain aspects of the background to this process are noteworthy. On 30 April 2006, the Independent Electoral Commission (CEI) published the electoral timetable, according to which the first round of the presidential and legislative elections would take place on 30 July 2006 and the electoral campaign would begin at midnight on 29 June 2006 and end at midnight on 28 July 2006.

25. The CEI and the Supreme Court of Justice selected, from the 73 candidacies submitted, 33 candidates, including four women, to run in the presidential election and 9,707 candidates for the 500 seats in parliament to be filled by the legislative elections.

26. The electoral process was established by Act No. 06/006 of 9 March 2006 on the organization of presidential, legislative, provincial, urban, municipal and local elections, in particular articles 28 to 36, published in the Official Gazette of the Democratic Republic of the Congo dated 10 March 2006.[1]

B. Casting of votes

27. On 20 August 2006, the CEI announced the provisional results of the first round of the presidential election of 30 July on national television. President Joseph Kabila was in first position, with 7,590,485 votes, or 44.81 per cent of the total votes cast, followed by Vice-President Jean-Pierre Bemba, with 3,392,592 votes, or 20.03 per cent of the total, and the leader of the Parti lumumbiste unifié, Antoine Gizenga, with 2,211,290 votes, or 13.06 per cent of the total.

28. The two leading candidates, Joseph Kabila and Jean-Pierre Bemba, will again be contenders in the second round of the presidential election, scheduled for 29 October 2006, which will be held at the same time as the provincial elections.

29. According to the CEI, of the 25,420,199 registered voters, 17,931,238 took part in the election, representing a participation rate of 70.54 per cent. The total number of votes cast was 16,937,534; there were 870,758 invalid ballots and 122,946 blank ballots.

30. The final results were announced by the Supreme Court of Justice on 15 September 2006.

C. Incidents and irregularities in the vote

31. A variety of incidents and irregularities were reported to the independent expert, including the torching and destruction of 11 polling stations in the country (seven in Mweka (Kasaï Occidental) and 4 in Mwene-Ditu (Kasaï Oriental)) and the burning of 34 electoral kits.

32. Six CEI officials, caught red-handed falsifying the records, were arrested and transferred to the High Court of Kinshasa/Gombe on 10 August 2006.

[1] See http://droit.francophonie.org/doc/html/cd/loi/leg/fr/2006/2006dfcdlegfr2.html.

33. It was also reported that fraudulent or even impossible scores had been posted. For example, a polling station in Katanga credited one candidate with 110 per cent of the votes. In a polling station in Isangi (Orientale Province), the public notice board at the local vote-counting centre showed 183,164 voters, when only 155,017 persons were registered to vote there.

34. In addition, the discovery of 5 million extra ballot papers, ordered unbeknown to the candidates, contributed to a serious feeling of uneasiness.

35. Many domestic observers are very worried about the country's future, particularly in view of the irregularities recorded during the elections and the grave human rights violations — lootings, killings, arbitrary arrests, cruel, inhuman and degrading treatment — perpetrated on that occasion.

36. The National Human Rights Observatory (ONDH), in a report dated 12 August 2006, entitled "Analyse, avis et considérations de l'Observatoire national des droits de l'homme portant sur l'exercice des libertés publiques pendant la campagne pour les élections présidentielles et législatives en République démocratique du Congo" (Analysis, opinion and considerations of the National Human Rights Observatory on the exercise of public freedoms during the campaign for the presidential and legislative elections in the Democratic Republic of the Congo) (document 012/ONDH/2006)[2] denounced "a day of great commotion culminating in bloody demonstrations and systematic looting on the occasion of the return to Kinshasa of a candidate for the highest office, Vice-President Jean-Pierre Bemba, and the election rally that followed in the Tata Raphaël stadium of Kalamu Commune". On that day, 27 July 2006, the headquarters of the High Media Authority (HAM) and of ONDH, the offices of the General Secretariat for Youth and Sport, the school of Ms. Joëlle Yowa, the church of the Army of the Eternal and the headquarters of the orchestra of the musician Werrason were ransacked. The report also tells of the death in Matadi, on the same day, of 12 followers of Bundu-Kia-Kongo (a political and religious movement), a soldier and four national police officers.

D. Comments on the ballot

37. The elections on 30 July 2006 were the first in 40 years of autocratic rule, without any real consultation of the people through free, democratic and transparent elections by direct universal suffrage.

38. For the observers, especially those from outside the Congolese political arena, it was therefore already "a small miracle", in the words of the Deputy Special Representative of the Secretary-General for the Democratic Republic of the Congo, Ross Mountain, that a country the size of Western Europe in a state of advanced partition could, to the surprise of everyone, rise to this major challenge by voting in a calm, disciplined and untroubled fashion, throughout the national territory, notwithstanding a few isolated cases of violence.

39. The head of the African observer mission, Théophile Nata, thus emphasized that the irregularities and shortcomings observed in the 30 July elections were not such as to call their credibility into question.

[2] The report is available on the Internet at http://www.congoforum.be/upldocs/ATT00011.pdf.

40. Finland, currently holding the presidency of the European Union, expressed its satisfaction with the conduct of the elections, through its Minister of Defence, Seppo Kääriäinen.

41. The MONUC Human Rights Division (HRD), in a press briefing on 2 August 2006, said it was satisfied with the conduct of the ballot and with the fact that "apart from a few isolated incidents, citizens of the Congo were able to go to the polls in a spirit of peace, calm, respect and tolerance".[3]

E. Sad awakenings

42. Following the announcement of the results of the elections of 30 July, a group of 15 presidential candidates, in a statement dated 4 August 2006 and issued on 11 August, complained about alleged "flagrant irregularities and massive fraud" that had marred the poll. They contest the election results and accuse national institutions and the international community of complicity.

43. The next few days, particularly 20, 22 and 23 August 2006, are among the bleakest in the history of the Democratic Republic of the Congo and were marked by armed clashes between the supporters of the two winners of the first round, who had thereby qualified for the second round and who were none other than the outgoing president, Joseph Kabila, and his Vice-President and head of the Economic and Financial Commission (ECOFIN), Jean-Pierre Bemba.

44. Following these clashes, the Minister of the Interior, Théophile Mbemba, stated that, of the 66 reported casualties, 43 had been wounded and 23 killed, including 12 police officers, seven civilians and four soldiers who were not part of Kabila's or Bemba's forces, neither side having released a tally of its casualties.[4]

45. A woman aged about 20 was killed on 22 August 2006 by a shot from a rifle fired without warning by the Republican Guard in Kimbanseké commune; in Bandalungwa commune, a police officer was reported to have suffered the necklace torture and been burned alive by an angry crowd.

46. The entire international and national community became involved in a series of mediation measures to defuse this climate of violence and hatred and thus save the electoral process on which the national and international community had pinned so much hope.

47. On 21 August, the FARDC command issued instructions forbidding any soldier to carry weapons except for official reasons, duly attested by a mission order.

48. On 22 August 2006, in a press statement released by the President of the Security Council, Nana Effah-Apenteng (Ghana), the members of the Council appealed to the political leaders to respect the electoral calendar established by the Independent Electoral Commission. They expressed their serious concern about the violent clashes between armed elements that had occurred in Kinshasa on 20 and 21 August 2006 and called on the Congolese leadership not to allow the progress achieved by the people of the Democratic Republic of the Congo to be jeopardized

[3] Available on the MONUC site (http://www.monuc.org/News.aspx?newsID=12047).

[4] See the report published on the site of the Office for the Coordination of Humanitarian Affairs (http://www.irinnews.org/report.asp?ReportID=55280&SelectRegion=Great_Lakes&SelectCountry=DRC).

at that stage. To that end, they expressed the hope that the proposed meeting between President Joseph Kabila and Vice-President Jean-Pierre Bemba would be held as soon as possible in order to defuse the current political tension.[5] In a statement issued on 23 August 2006, the Secretary-General of the United Nations underlined the responsibility of President Joseph Kabila and Vice-President Jean-Pierre Bemba to resolve the situation through dialogue and peaceful means. He urged them to meet as quickly as possible to ease tensions following the announcement of the results of the first round.[6]

49. Also on 22 August, the President-in-office of the African Union, the President of the Republic of the Congo, Denis Sassou Nguesso, condemned all the acts of violence reported since the first round of the elections and called on all the parties to put an end to the violence.

50. On 23 August, the President of the National Episcopal Conference of the Congo (CENGO) and Archbishop of Kisangani, Monsignor Laurent Pasinya, urged President Kabila and Vice-President Bemba to favour dialogue in the higher interests of the nation. On 28 August 2006, the President of the Truth and Reconciliation Commission urged the two protagonists to engage in dialogue.

F. On the need to adopt immediate measures

51. The current situation highlights the fragility of peace in the Democratic Republic of the Congo. Certain types of behaviour are to be singled out and certain immediate recommendations need to be adopted.

52. Throughout the campaign, the media engaged in full-blown attacks against political opponents and protagonists, made xenophobic and discriminatory remarks and incited ethnic hatred. The rules of deontology and ethics should therefore be strictly applied, with a call for greater professionalism and moderation. It is to be feared that the second round may be a disaster if the press is not disciplined and does not comply with the laws and regulations governing freedom of the press and freedom of opinion. The media should consequently publicize the programmes for society and government of the two remaining presidential contenders.

53. The FARDC and the national police force must remain strictly neutral and apolitical in the present context, where they are all too frequently called upon to intervene and to ensure law and order.

54. It is more important than ever that former military factions which have not disarmed take stock of the situation and of the need to preserve the social peace by not allowing themselves to be used in forms of defence or self-defence that may undermine law and order or prompt a return to the infernal cycle of violence in the country.

55. As for the security forces of the various parties, it is vital that the troops of the two warring camps and all other troops of this kind remain confined to barracks until the end of the electoral process.

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[5] Press release issued under reference number SC/8814/AFR/1421, available at http://www.un.org/News/Press/docs/2006/sc8814.doc.htm.

[6] Press release issued under reference number SG/SM/10607/AFR/1423, available at http://www.un.org/News/Press/docs/2006/sgsm10607.doc.htm.

56. After the meetings held between ICST and, on the one hand, President Joseph Kabila and, on the other hand, Vice-President Bemba, following the events of 20, 21 and 22 August, a working group was set up to normalize the situation. The group included the Minister of Defence, the Chief of Staff of the FARDC, the Inspector General of the Congolese National Police Force, the Commander of the Republican Guard, the military adviser to the President of the Republic, the close protection officers of Vice-President Bemba, officers of the peacekeeping force of the European Union (EUFOR RD Congo), officers of the European Union Police Mission in Kinshasa with its Integrated Police Unit (EUPOL KINSHASA) and officers of MONUC. This working group and the two commissions responsible for monitoring observance of the rules of good conduct between the two camps and for investigating the events in Kinshasa of 20 and 22 August 2006 must be able to pursue their work.

57. Lastly, the urgent appeals from the Secretary-General of the United Nations, Kofi Annan, the President-in-office of the African Union and President of the Republic of the Congo, Denis Sassou Nguesso, the Special Representative of the Secretary-General for the Democratic Republic of the Congo, William Lacy Swing, the Chairman of ICST, the Special Envoy of the European Union for the African Great Lakes Regions, Aldo Ajello, and a sizeable number of political and social leaders must rapidly lead to a meeting between President Joseph Kabila and Vice-President Jean-Pierre Bemba with a view to defusing the political atmosphere and restoring trust and peace so that the electoral campaign and the second round of elections can proceed peacefully.

G. Lessons to be learned from the ballot

58. The results of the first round showed the existence of two geopolitical trends in Congolese public opinion. According to some analyses, this divide was already evident in the continuous and increasingly violent polemics in which these two political camps had been engaging for a very long time and which were denounced by the CEI and the High Media Authority in a joint press communiqué. If the nation is not to become split along geographical lines, it is imperative that this trend be halted before it becomes firmly entrenched.

59. In point of fact, however, it is realistically quite conceivable that the altercations between two of the candidates who are expected to do best were fortuitous and quite unconnected with the region to which they belong. The independent expert is of the opinion that the Congolese have put tribalism and regionalism behind them: throughout the country, they voted for public figures who were not from their area. For example, in Bas-Congo and Bandundu, the candidates Kabila, Bemba, Kashala and Pay Pay vied for votes with Gisenga and Mboso; in Katanga, Kashala, Bemba and Pay Pay snatched votes from Kabila and Lunda-Bululu, while in the two provinces of Kasaï the candidates Bemba, Ruberwa and Kabila held their own against Kashala, Munkamba, Lumumba and Nzuzi Wa Mbombo.

IV. Status and massive violations of human rights

A. Humanitarian situation

60. Under the threat of clashes and various kinds of aggression, many people who have been forced to move and go into exile are struggling to survive. In the Katanga region, military operations launched against the Mai-Mai militiamen since 11 November 2005 have caused some 120,000 people to flee. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the most recent waves, comprising 49,000 people, are living in difficult conditions.[7]

61. At the beginning of February 2006, Médecins Sans Frontières announced that there was a serious humanitarian crisis in Katanga, where at least 234,960 displaced persons, who had been living in disastrous conditions for several months, had so far received little assistance. The village of Dubie, which normally had 10,000 residents, had taken in 18,000 displaced persons. The non-governmental organization has also counted 35,000 displaced persons in the Upembe area, 9,000 in Pweto and Kabalo (where, however, there are no camps) and 21,000 in the Mitwaba area.

62. During a visit to the Democratic Republic of the Congo at the beginning of March 2006, the United Nations humanitarian troika, consisting of the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP) and the United Nations Children's Fund (UNICEF), appealed to the international community to increase humanitarian assistance to the Democratic Republic of the Congo, where there are now more than 1.6 million internally displaced persons, with 410,000 refugees in neighbouring countries. A note from UNHCHR of 21 August 2006 indicated that, of the US$ 668 million requested of the international community since January 2006 to save lives in jeopardy in the Democratic Republic of the Congo, only US$ 235 million had been collected, which was not enough to enable humanitarian actors, including OCHA, to supply the help sorely needed by almost 10 million Congolese living in truly catastrophic circumstances.

B. Lack of security

63. Like all the years since the outbreak of war in the Democratic Republic of the Congo, 2006 began and has unfolded against a backdrop of violence and criminal acts producing palpable insecurity throughout the country. Several cases have come to the attention of the independent expert through the press and a variety of other sources. At the beginning of 2006, eight Blue Helmets from Guatemala were killed in an ambush in Garamba National Park (in the Haut-Uélé district) in the north-east of the Democratic Republic of the Congo. According to the MONUC communiqué, five other Blue Helmets from Guatemala were wounded in the attack.[8]

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[7] See the report dated 6 January 2006 entitled "DRC: Tens of thousands of IDPs flee from the fighting in Katanga" available at: http://www.irinnews.org/report.asp?ReportID=50970&SelectRegion=Great_Lakes&SelectCountry=DRC.

[8] See the MONUC press communiqué dated 23 January 2006 (http://www.monuc.org/News.aspx?newsID=9719).

64. Médecins Sans Frontières has also reported attacks by Mai-Mai militiamen on the villages of Kibondo and Kyubo, situated 160 kilometres south of Mitwaba, on 16 January 2006.

65. From the point of view of security, the Kivus are still a death zone. In the night of 18/19 January 2006, armed men in military uniform shot Professor Serubungo Senkoko Félicien at his home on the Avenue du 30 juin, in the Himbi II district of Goma. Also in Goma, Pascal Wimana, a butcher working at the Kehembe slaughterhouse in the Birere district, died from stab wounds inflicted on 3 January 2006 by unknown persons, three of whom have since been identified as Sefu Kinyata, Abdou and Amani. In the same town, it has been reported that Bizimungu Bazirane was shot dead at his home by a man in uniform. On 7 January 2006, a man and his son were killed and thrown into Lake Kivu after being reported missing from their home five days earlier.

66. On 30 January 2006, violent fighting broke out between regular army soldiers and a breakaway group from the 83rd brigade of the FARDC in the localities of Rwindi and Kibrizi in the east of the country. These clashes were followed by looting and vandalism directed against the population and the interruption of radio and television broadcasts from "La Colombe" after the station had been ransacked and its staff had been threatened by men in uniform.

67. In resolution 1616 (2005) of 29 July 2005, the Security Council requested the Secretary-General to re-establish within thirty days and for a period expiring on 31 January 2006 the Group of Experts responsible for closely monitoring compliance with the arms embargo against the Democratic Republic of the Congo imposed by resolution 1493 (2004) and expanded by resolution 1596 (2005).

68. In the night of 10/11 February 2006, Rwandan Hutu rebels knifed to death four persons in Nyamarheg, in the Walungu area of South Kivu and escaped.

69. At about 10 p.m. on 23 February 2006, a member the Integrated Police Unit was shot in Kinshasa in front of his wife by persons in civilian clothes.

70. In mid-March 2006, a group of Mai-Mai fighters led by General Gédéon resurfaced in northern Katanga and marched on the locality of Mpiana Mwanga 90 kilometres from Manono. This group of some 100 attackers seized Mongo, Lubimba, Kabala, Lenge and Kalwala and then looted and set fire to them.

71. At the beginning of March 2006, heavy clashes occurred in Punia between the FARDC and Simba fighters from Mungele, apparently in order to gain control of diamond production in the quarries at Ombandjo.

72. Also at the beginning of March 2006, reports were received that followers of General Laurent Nkunda had again taken up arms and were attacking travellers on the road between Sake and Kichanga in the Masisi area and that the dissident general was in Goma.

73. According to a report of 17 March 2006, Louise Kipupa and Barambesha Augustin, employed by the Union des Banques Congolaises (UBC), were murdered by five men in uniform on 8 March 2006. In fact a week never passes without a report of a murder in the town of Goma and the surrounding area.

74. Six heavily armed men are said to have murdered the female assistant of Governor Eugène Serufuli during the night of 8 March 2006 in the Himbi district of Goma.

75. On 19 April 2006, seven skulls and some human bones were discovered in a communal grave at Tokolote in the commune of Mikilenge. Sources close to the victims denounced armed gangs scouring the region.

76. In the eastern part of the country, 15 persons, including six Rwandan Hutu rebels, eight civilians and one soldier from the Congolese army were killed in two attacks on 1 and 2 May 2006 in North Kivu.

77. On 3 May 2006, a group of Mai-Mai combatants known by the name "Bulango" looted and burned the houses of the population.

78. During the night of 13/14 May 2006, Michel Innocent Mpinga Tshibashu, President of ONDH and also President of the Bar Association, was the victim of an armed attack at his home. The attackers were fought off by the private security guards hired to protect his home. This attack demonstrates that the criminals know no limits and have no respect for authority figures. Judicial officials and human rights defenders need to be protected by the security forces. The independent expert regrets to report that the Government of the Democratic Republic of the Congo has not undertaken any investigation following this attack.

79. On 20 and 21 May 2006 in Ituri, the FARDC mounted an offensive which resulted in the deaths of 32 militiamen and five soldiers.

80. An Air Force captain by the name of Sumaili, a helicopter pilot, was killed in cold blood by armed men during the night of 23/24 May 2006 in Kinshasa.

81. On 27 May 2006 on the road from Kasengeri to Goma, a bus driver was murdered by armed men.

82. In early June 2006, a child was killed in a house which was burned by 11 Rwandan Hutus in Kanyola, south-west of Bukavu.

83. On the night of 19/20 June 2006 in Muganga, in North Kivu, uniformed men murdered Aruta Baruta at his home.

84. On 25 June 2006, two demobilized soldiers were killed by the 81st brigade of the FARDC in Masisi.

85. On the night of 7/8 July 2006, three armed men murdered the journalist Louis Bapuwa Mwamba, formerly of the Zairian press agency, in the Malandi district of Kinshasa. According to his neighbours, the killers made it clear that they intended to kill him, although the victim had offered them money to spare his life; they took his money and killed him in cold blood before fleeing.

86. A note dated 17 July 2006 from the OHCHR field office in the Democratic Republic of the Congo reported that the militia chief Peter Karim of the Front nationaliste et intégrationniste had agreed to negotiate with the Government following a meeting held in Doye, 60 kilometres north of Bunia, under the auspices of MONUC.

87. On 18 July 2006, a policeman was burned alive by demonstrators during a march organized in Kinshasa by the Union pour la démocratie et le progrès social (UDPS) and its allies.

88. Lack of security remains one of the gravest problems in the Democratic Republic of the Congo, and it appears that increased support and more sustained technical assistance will be needed from the international community to enable the security forces, the police and the armed forces to respond effectively to the major challenges still to be addressed in this area.

C. False arrest, illegal detention, torture, disappearance

89. False arrest, illegal detention and torture are frequent occurrences in the Democratic Republic of the Congo, especially in the eastern zones where the security situation is particularly dire.

90. The Committee of Human Rights Observers (COHDO), an NGO based in Kinshasa, issued a press release citing many cases of false arrest without a warrant and illegal detention in North Kivu; prolonged detention, lasting months or years, without the detainees ever being brought before a judge; deplorable prison conditions, marked by overcrowding, unsanitary conditions, lack of light and ventilation in the cells, and denial of visiting rights and access to medical care.[9]

91. A note dated 9 March 2006 from the OHCHR field office in the Democratic Republic of the Congo reported that on 27 February 2006, following clashes between the FARDC and the militiamen in the village of Tchey, near Bunia, more than 8,000 people, mostly women and children, were being held hostage by the militiamen, who were using them as a human shield.

92. In a note dated 14 March 2006, the MONUC Human Rights Division at Beni in North Kivu reported numerous cases of false arrest, extortion and cruel, inhuman and degrading treatment on the part of 200 agents of the Detection of Unpatriotic Activities Police (DEMIAP), based in Oicha, 27 kilometres from Beni.

93. COHDO/North Kivu, in a note dated 7 March 2006, reported that eight people were beaten by soldiers of the 5th brigade in Burmaba in Rutshuru territory; the victims were attending a wake for Ms. Mapenze Kasigwa, who was killed by an unknown gunman in a drive-by shooting.

94. The NGO Voix des Sans Voix (VSV), in press release No. 38/RDC/VSV/CD/2006, reported that the publisher of the newspaper *Eclaireur africain* had been arrested and taken to the Republican Guard station. He was handcuffed, his feet were bound and he was tortured.

95. The report of the OHCHR field office in the Democratic Republic of the Congo dated 3 March 2006 indicated that more than 1,700 victims of various forms of violence in the community of Wakabangu II in the Pangi valley had been left to fend for themselves with no assistance. The victims included 1,276 women who had been subjected to sexual violence and 422 men who had been subjected to torture, including genital torture. All these cases require comprehensive care, which is not available.

[9] See press release No. 24/CODHO/KN/06Z, issued on 21 March 2006 (http://congomania.afrikblog.com/archives/2006/03/22/1563305.html).

D. Sexual violence

96. Sexual violence is widespread in the Democratic Republic of the Congo. It is a serious problem, but one that is rendered trivial by impunity and war. Attacks of all types are accompanied by rapes, which are regarded as war trophies. These signs of victory result in trauma and humiliation for the woman, her family and the country as a whole. The justice system is powerless to quell this phenomenon, despite several landmark rulings.

97. Numerous cases of sexual violence have been reported during the first half of 2006. On 26 January, in Lunyenya, south of Bukavu, a woman over the age of 70 was abducted and then raped by two FARDC members, according to a note from the OHCHR field office dated 30 January 2006.

98. In North Kivu, MONUC reports that five FARDC members raped a woman in the village of Bamaka during the month of January 2006.

99. On 10 February 2006, a 13-year-old girl was raped by a member of the Republican Guard at Camp Tshatshi in Kinshasa.

100. Several other cases of rape have been reported: on 20 February 2006, a woman was raped in Kananga, in Kasaï Occidental, by seven members of the FARDC; on 8 February 2006, a woman was raped by a FARDC member in the village of Makumbwe; on 26 January 2006, a woman was abducted and raped by four FARDC members in the village of Kyavisale, south of Butembo; on 27 February 2006, a woman was raped by two FARDC members in the village of Mwalika after they broke into and looted her home; on 2 February 2006, a man was raped and then killed by armed men.

101. MONUC reports that two girls in the village of Kirende, in Kalemie (Katanga Province), were abducted on 22 February 2006 and then raped over three days.

102. MONUC/Bukavu reports that Rwandan Hutus abducted and raped 10 women on the Kamituga-Muenga road, south-west of Bukavu in South Kivu, on 28 February 2006.

103. A note dated 9 March 2006 from the OHCHR field office in the Democratic Republic of the Congo reports the rape of two women in the village of Kalwala (Katanga Province) by a group of 30 Mai-Mai combatants under the command of Colonel Kasfombowe of the Gédéon group.

104. In Burinya, South Kivu, 2,800 women and girls were reported to have been raped by FARDC soldiers with the full knowledge of the commanders of the units based in the region. Of these women, 630 were infected with sexually transmitted diseases or opportunistic infections, and 80 were later found to be HIV-positive.

105. The MONUC Human Rights Division report for the week of 27 February to 3 March 2006 indicates that on 20 February 2006 seven FARDC members raped a woman in Kananga, in Western Kasaï, after breaking into her home and tying up her husband. Another woman was abducted and raped by four FARDC members on 26 January in the village of Kyavisale in North Kivu.

106. A 10-year-old girl and a woman were raped on 1 March by members of the 110th brigade of the FARDC, under the command of Lieutenant Masola, based in Luvungi in South Kivu.

107. On 12 March 2006 in the Birere district of Goma, North Kivu, a girl accused of witchcraft was tortured by the inhabitants and then raped by soldiers.

108. Two women and a 15-year-old girl were raped by 30 soldiers on 10 March in Kpandroma, Ituri Province. The same source indicates that, since the beginning of the year, more than 50 women have been raped in the village of Mabingu in South Kivu.

109. On 7 April in the Kingabwa district of Kinshasa, a girl aged 18 was raped by six men.

110. On Saturday, 22 April, a four-month-old baby girl was raped by a young man aged 21 in Équateur Province; the perpetrator has been arrested and is in police custody.

111. In late April, an 18-year-old girl in the Kingabwa district of Kinshasa was raped and drugged by a group of five individuals.

112. On 27 April 2006 in Kanyol, a woman lodged a complaint, indicating that she had been raped by 11 Rwandans.

113. On 3 June, two soldiers were convicted by the Kananga garrison court for the rape of two 13-year-old girls; one was sentenced to 18 years in prison and the other to 17 years.

114. As regards legislation, on 22 June 2006, the National Assembly adopted a law criminalizing sexual violence and raising the age of majority for girls to 18.

115. On 21 June 2006, eight soldiers were sentenced to life in prison for mass rape committed during a riot in July 2005 in Mbandaka (Équateur Province) in the north-western part of the country.

116. According to a report by the NGO Synergie provinciale de lutte contre les violences sexuelles, at least 4,000 cases of rape have been identified in the Province of South Kivu during the period from January to May 2006 alone.

117. On 18 June 2006, several cases of rape and abusive treatment by FARDC soldiers were reported in North Kivu: a girl stated that she had been raped by the 9th brigade of the FARDC in Kalengera in Rutshuru territory; on 24 June three women were raped by six soldiers in the village of Muja, 10 kilometres north of Goma.

E. Situation of children

118. The situation of children in periods and in zones of conflict is always dramatic. The independent expert, in previous reports, condemned the use of children, in particular, to wage war and engage in prostitution, but it has to be noted that these practices still persist.

119. Even in the so-called pacified zones, intolerable and inadmissible conduct in this regard can be observed, notably criminalization and mistreatment of children allegedly engaging in witchcraft. The Government must punish such conduct in order to protect children.

120. The independent expert draws attention here to his previous reports (A/60/395 and E/CN.4/2006/113) and will limit himself to mentioning some recent cases providing evidence of unacceptable treatment of children.

121. During a prayer meeting at Lubumbashi in Katanga Province, a pastor of the 30th Pentecostal community of the Congo burned four children alleged to have engaged in witchcraft.

122. About twenty pupils are said to have been physically abused by an abbot in Mwene-Ditu in Kasaï-Oriental.

123. The representatives of UNICEF, the NGO Save the Children and the Child Protection Section of MONUC have drawn attention to the presence of children within the FARDC in Walikale.

F. Refugees, war-displaced persons and internally displaced persons

124. The fighting and the voluntary or forced displacements of the rebel groups are causing constant displacements of populations held hostage. The independent expert will list here some occurrences that illustrate the gravity of the phenomenon.

125. In the Katanga region, the military operations launched against the Mai-Mai militiamen since 11 November 2005 have caused some 120,000 people to flee. This situation affects the territories of Pweto, Mitwaba and Bukama.

126. The attack on Rutshuru territory launched on 18 January 2006 by General Laurent Nkunda resulted in the displacement of almost 20,000 persons and the Office of the High Commissioner for Refugees (HCR) reports that 15,000 refugees have moved to the Kisoro region.

127. In South Kivu, the fighting in Mwenga territory between the Congolese army and the Rwandan Hutu movement Forces démocratiques pour la libération du Rwanda (FDLR) has caused the displacement of almost 150,000 people, according to OCHA.[10] The same source indicates that the clashes between the regular army and the insurgents in North Kivu displaced almost 70,000 persons in the first half of 2006.

128. On 24 February, more than 60,000 displaced persons received humanitarian aid in the zones of Pweto, Dubie, Bukama and Mitwaba in Katanga Province.

129. OCHA reports that a thousand displaced persons have arrived in the areas south of Bunia.[11] The militias accuse them of collaborating with the FARDC and kill them in retaliation, while the FARDC suspect them of being in league with the enemy militias and mete out the same cruel treatment.

130. On 1 March 2006, 8,000 and then 10,000 people fled Tchey to take refuge in Aveba after messages announced that war was imminent to disarm the militias.

131. About 300 men, women and children from Aveba and Kagaba arrived on 30 April 2006 in Komanad, south of Bunia. They were fleeing the threats of the Mouvement Révolutionnaire Congolais (MRC) militia.

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[10] See "DRC: Humanitarian action plan launched", IRIN News, 13 February 2006 (http://www.irinnews.org/report.asp?ReportID=51669&SelectRegion=Great_Lakes&SelectCountry=DRC).

[11] See "DRC: New movement of displaced in Ituri District", IRIN News, 8 March 2006 (http://www.irinnews.org/report.asp?ReportID=52088&SelectRegion=Great_Lakes&SelectCountry=DRC).

132. Several humanitarian organizations report that the fighting between the FARDC and the Mai-Mai militiamen in the north and centre of Katanga Province has displaced at least 165,000 persons in the past six months.

133. At the beginning of July 2006, 882 Congolese refugees from the Democratic Republic of the Congo were repatriated from the United Republic of Tanzania, 448 of them arriving via Baraka in South Kivu.

G. Rights of minorities

134. Many reports point to the urgency of focusing on the rights of the indigenous and minority peoples. The indigenous peoples' rights to their lands are often flouted, violated or ignored, as are their other fundamental rights (economic, cultural, social and political).

135. The press reports that the present situation is causing great hardship to the indigenous populations. The NGO MADDY reported on 21 March 2006 that more than 150 Pygmies had been driven off their lands in Masisi in North Kivu. Fleeing Bufumandu, they took refuge in Mubambiro, 20 kilometres from Goma.

136. In a press release of 23 March 2006, CODHO reported on Pygmies being hunted. On 14 March, 89 Pygmies (36 children, 30 women and 23 men) reached Mubambiro (Sake), 25 kilometres south of Goma; they were said to be without lodging and without food.[12]

137. AJERH, in an alert of 6 June 2006, draws attention to the difficult conditions in which the indigenous peoples of North and South Kivu, in the territories of Rutshuru, Masisi, Lubero and Walikale, have been living since the outbreak of the war between the FARDC soldiers of the 5th Brigade and the soldiers loyal to General Laurent Nkunda.

H. The prison situation

138. Despite efforts to improve it, the prison situation remains precarious and serious. Detention conditions are deplorable almost everywhere, with escape being the prisoner's only chance of survival. In prisons and holding cells everywhere, the situation is one of overcrowding, outdated facilities, lack of hygiene, food and medical care, and disregard of proper procedures resulting in illegal detentions.

139. The independent expert wishes to draw attention to some particularly noteworthy cases. After the escape reported on 28 March 2006 from the Osio high-security prison in Kisangani, there was another escape, on 2 April 2006, involving 34 prisoners from the central prison in Kisangani. According to the prison governor, the escape is attributable to the lack of food and medical care and to the delay in processing prisoners' cases.

140. In the evening of 4 June 2006, 192 prisoners escaped from the Bukavu prison, after tying up the soldiers guarding them. The same source mentions that the human

[12] See "RDCongo-Nord Kivu: Persécution/déportation/dépossession/catastrophe humanitaire des autochtones pygmées", source: ASSODIP/Goma (http://www.congovision.com/forum/codho2.html).

rights monitoring committee for the central prison of Boma (Bas-Congo), has complained of the deplorable situation there and accused the Ministry of Justice of making no effort to find meaningful solutions.

141. The same source reports that, on 25 June 2006, more than 70 prisoners from the central prison of Mwene-Ditu in Kasai Oriental Province escaped by forcing the doors of their cells and breaking through the outer wall.

V. Justice, impunity and future directions

A. Internal justice and impunity

142. The smooth functioning of the justice system depends on working conditions in its institutions and the resources placed at their disposal. However, the budget allocation for justice in both 2005 and 2006 was insignificant (about 0.6 per cent), when measured against the multiple problems facing this crucial sector, notably the dilapidation of infrastructures, shortages of judges and magistrates and intolerable working conditions.

143. Judges' and magistrates' salaries are ludicrous and are not paid regularly. The amounts range from US$ 13 for a local magistrate to US$ 30 for senior Supreme Court judges and prosecutors. It should nevertheless be noted that substantial monthly bonuses ranging from US$ 350 to US$ 500 are paid to all judges and magistrates. These bonuses are 15 to 20 times higher than the salaries of some judicial officials.

144. Many judges and magistrates have complained about their meagre salaries; some have waited four or five years to receive a tiny advance. With such working conditions, they are at the mercy of the persons under their jurisdiction. The independent expert was told that judges and magistrates were driven to hearings by defendants. The financial independence of the judiciary is obviously vital for the proper functioning of the judicial system.

145. Obviously, in such conditions crime cannot be counterbalanced. Judges cannot assert themselves, still less pass independent judgements. That being the case, there is no guarantee of protection for them if they question, arrest, try, convict or imprison this perpetrator of a crime or that warlord. Judges and magistrates are not free to take decisions and have no protection against political or other pressures.

146. It should be noted, however, that, in the context of reform of the justice system, in May 2006 Parliament adopted legislation regularizing the status of the magistrates in the Democratic Republic of the Congo, although to date this legislation has not yet been promulgated.

147. The existence of an independent and impartial judiciary and an independent bar is an essential prerequisite for ensuring the protection of human rights and guaranteeing that there is no discrimination in the administration of justice.

148. Despite these major problems, however, it should be emphasized that domestic justice has been bravely upheld by major landmark decisions that should be lauded. For example, on 3 June 2006 the Kananga garrison court sentenced two soldiers to 18 and 17 years' imprisonment for the rape of two 13-year-old girls, also pronouncing other sentences of penal servitude.

149. Another decision is noteworthy because of the interest it aroused. This is the verdict in the so-called Songo-Mboyo trial. On 12 April 2006, the Mbandaka garrison court (Équateur Province) handed down its verdict in the trial of the soldiers of the former 2nd and 3rd Brigades of the Mouvement pour la libération du Congo (MLC), accused of mass rape of a number of women and girls living in the locality of Songo-Mboyo, in Bongandanga territory.

150. The case goes back to the night of 21 December 2003, when soldiers demanding their pay had perpetrated a mass rape of at least 119 women and girls, several under the age of 18. The accused were tried for crimes against humanity. The court, in its judgement handed down on 12 April 2006, sentenced seven of the 12 soldiers to life imprisonment for crimes against humanity. Reparation amounting to US$ 10,000 was requested for the family of one victim who died. The other rape victims will each receive US$ 5,000. It is important to note that the court made the Congolese Government jointly and severally liable for paying these amounts in the event that the perpetrators are insolvent (as is likely).

151. The Songo-Mboyo trial is significant because, for the first time, the court applied the principles embodied in the Rome Statute of the International Criminal Court, which qualifies mass rape as a crime against humanity. It should be noted that the Mbandaka garrison tribunal sentenced members of the powerful FARDC to life terms for this crime.

152. The high crime rate in the Democratic Republic of the Congo, the disturbing number of offences committed and the impunity, which encourages repeat offences, compound the impotence of the national courts. The judiciary suffers from a severe lack of financial and human resources and does not have the authority to effectively address the serious crimes committed by warlords or senior civil servants. In such cases, it is necessary to use other legal mechanisms, in particular the International Criminal Court.

B. The International Criminal Court: severe limits on the campaign against impunity in the Democratic Republic of the Congo

153. The International Criminal Court initiated proceedings in the Democratic Republic of the Congo within the framework of the campaign against impunity.

154. On 20 March 2006, Pre-Trial Chamber I held a first appearance hearing in the case against Thomas Lubanga Dyilo, a warlord from Ituri Province and militia leader of the Union des patriotes congolais (UPC), who is incarcerated in The Hague and has been charged with, inter alia, the conscription and use of children during the 2002-2003 civil war. The Office of the Prosecutor of the International Criminal Court, who arrived in Kinshasa on 3 April 2006, reaffirmed the Court's intention to prosecute the crimes within its jurisdiction committed in the Democratic Republic of the Congo since 2002.

155. It is clear from the foregoing that the International Criminal Court alone cannot try all the crimes and serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo over almost a decade, its jurisdiction being limited to acts committed since the entry into force of the Rome Statute (1 July 2002).

156. What is needed, therefore, is a mechanism that would guarantee not only the effective suppression of crimes covered by the Rome Statute committed prior to 1 July 2002 but also the administration of justice and an all-out campaign against impunity.

C. Establishment of a special international criminal tribunal or joint criminal chambers

157. In order to combat impunity, which must be done if there is to be peace in the country and further crimes are to be prevented, the independent expert recommends the creation of a special international tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers to try crimes committed since 1994, the year specified in United Nations resolutions for serious violations of humanitarian law.

158. Certain measures could be taken to reduce the costs of a special tribunal. It could sit within the country, somewhere near its centre, in order to keep down the costs of transporting defendants and witnesses. The host State could provide premises and defray certain costs; at least half the judges and three quarters of the judicial personnel would be citizens of the Democratic Republic of the Congo; and the host State could be responsible for appointing lawyers.

159. Should it prove impossible to create an international tribunal, bearing in mind that it is essential to combat impunity and extremely serious crimes, consideration could be given to establishing joint criminal chambers attached to the appeal courts, with the right of appeal (preliminary and final appeal) to a chamber that is competent to hear it but which would come under the Supreme Court:

(a) Chambers of first instance could be attached to five appeal courts, one in Kinshasa and the other four strategically located throughout the country, taking into account the size of the country and distances;

(b) Chambers of first instance could be composed of three judges (two national and one non-national, or vice versa);

(c) The preliminary or final appeal court could be composed of three judges (two non-national and one national, or vice versa);

(d) The Public Prosecutor's Office would be organized and would function according to the same criteria.

160. The name of the institution could be the "Joint Criminal Chamber" and it would be responsible for trying persons accused of acts of genocide or other serious violations of human rights and international humanitarian law committed on the territory of the Democratic Republic of the Congo, as well as citizens of the Democratic Republic of the Congo accused of committing such acts or violations on the territory of neighbouring States.

161. Such an institution would be more flexible and less costly should the creation of a special international criminal tribunal prove unfeasible. It should nevertheless receive full support from the international community, given the country's current destitution.

162. The new joint criminal chambers could also contribute to restoring the country's judicial system in terms of staff, training, equipment and living and working conditions.

VI. Recommendations

163. **The independent expert recommends to all the Congolese parties, whether or not signatories to the Global and All-Inclusive Agreement, that they should:**

- **Promote among the population a culture of peace, tolerance, reconciliation, pardon, fraternity, peaceful coexistence, integration, national unity and patriotism;**
- **Recognize the need for all political actors and the media to foster the culture of dialogue and rejection of violence or incitement to violence and ethnic hatred.**

164. **The independent expert recommends to the Government of National Unity and Transition that it should:**

- **Take all necessary measures to affirm and consolidate the State's authority over the entire territory and foster rapprochement and a spirit of dialogue among the political actors;**
- **Ensure the effective integration, reunification, reinforcement and equipment of the army and police;**
- **Improve the currently precarious and inadequate physical, intellectual and equipment conditions of institutions and employees of the State, especially the judiciary, so that it can respond effectively to the requirements of justice and the fight against impunity;**
- **Combat the trafficking and illegal exploitation of natural resources;**
- **Combat all the crimes that continue to be committed, particularly sexual violence against women and children as a weapon of war;**
- **Combat the continuing use of children for war; combat militias and privately armed groups and prevent them from rearming;**
- **Combat the impunity which gives rise to crime;**
- **Work to enhance the status of women, protect them and help them to fulfil their potential; promote the rights of the child.**

165. **At the international level, the expert recommends that:**

(a) **The international community should:**

- **Support the transition to permit the establishment of the rule of law and a culture of lasting peace and support the current electoral process and its consequences;**
- **Support the restructuring, integration, recruitment, training and equipping of the army, the security forces and the police;**
- **Increase its support for MONUC and EUFOR to enable them to provide broader and greater mentoring and support to the FARDC**

and the national police, so that they may meet the various challenges posed by the constant crime and unrest within the country and on its borders;

- **Assist the field office of the Office of the High Commissioner for Human Rights in the Democratic Republic of the Congo in implementing its programmes and activities;**

- **Provide all necessary assistance to enable the independent expert to fulfil his complex mandate, taking into account the vastness of the country and the many human rights areas covered by his mandate;**

(b) **The Human Rights Council, the General Assembly, the Security Council and the Economic and Social Council should:**

- **Given the destitution of the judicial system in the Democratic Republic of the Congo and the scale and gravity of the crimes being perpetrated there for over a decade, establish by decision of the Security Council an international criminal tribunal for the Democratic Republic of the Congo or, failing that, joint criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002 and all subsequent crimes.**